



STATE OF WISCONSIN – JUDICIAL COUNCIL

AGENDA

**WISCONSIN JUDICIAL COUNCIL
NOVEMBER 20, 2020 – 9:00 A.M.
CONDUCTED ONLY BY ZOOM
MADISON, WISCONSIN**

This meeting of the Council is being hosted by Scott Kelly, Chief of Staff of Senator Wanggaard. He has provided the following login information:

**On 11/20/20, join Council Zoom Meeting using the following URL:
<https://zoom.us/j/93826787757>¹ There is no password.**

We want to thank Senator Wanggaard and Scott Kelly for their help. Please note the Public Notice at the end of this Agenda. Members of the public will be permitted to attend this meeting but must agree to refrain from disrupting the meeting in any. If anyone is unsure how to sign into the meeting, please email Bill Gleisner (wgleisner@sbcglobal.net) or call him at 414-651-3182..

INTRODUCTION

Because our meeting will revisit the issue of trial practice during the pandemic, I want to begin this Agenda with a recitation of the Council's powers and duties under its charter statute, Wis. Stat. §758.13. I want to emphasize that the Council's

¹ Scott has provided the following additional information concerning the Zoom meeting:

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powers and duties are expressed in terms of what the Council **shall** do. Wis. Stat. §758.13 reads in pertinent part as follows:

(2) Powers and duties. **The council shall** (Emphasis supplied):

- (a) Observe and study the rules of pleading, practice and procedure, and advise the supreme court as to changes which will, in the council's judgment, simplify procedure and promote a speedy determination of litigation upon its merits.
- (b) Survey and study the organization, jurisdiction and methods of administration and operation of all the courts of this state.
- (d) Receive, consider and in its discretion investigate suggestions from any source pertaining to the administration of justice and to make recommendations.
- (e) Keep advised concerning the decisions of the courts relating to the procedure and practice therein and concerning pending legislation affecting the organization, jurisdiction, operation, procedure and practice of the courts.
- (f) Recommend to the legislature any changes in the organization, jurisdiction, operation and methods of conducting the business of the courts, including statutes governing pleading, practice, procedure and related matters, which can be put into effect only by legislative action.
- (g) Recommend to the supreme court, legislature and governor any changes in the organization, operation and methods of conducting the business of the courts that will improve the efficiency and effectiveness of the court system and result in cost savings.

See also Wis. Stat. §751.12(5) ("The judicial council shall act in an advisory capacity to assist the [Supreme Court] in performing its duties under this section").

Based on a suggestion by Tom Shriner at our last meeting and consistent with the foregoing, I will make recommendations for a renewed discussion of Covid-19 and the practice of law in the following paragraphs of this Agenda.

- I. Roll Call and approval of the October 16, 2020 Minutes.
- II. Discussion of request from the Neighborhood Law Clinic of the UW Law School to support their Petition to the Supreme Court.
- III. Discussion of the formation of a special committee to study the effectS of Covid-19 on the practice of law in Wisconsin. This discussion will be based on Chapter 18 of the treatise I co-authored with Professor Grenig, *eDiscovery & Digital Evidence* (another copy of that Chapter accompanies this Agenda). As suggested by Tom Shriner during our last Council meeting, the following are specific issues which I suggest that we address

during our meeting.

- A. The Committee's first charge will be to review all studies now under way in Wisconsin concerning Covid-19 and procedural rules, such as the work of the Task Force created by the Supreme Court.
- B. The Committee's second charge will be to review all studies now under way at the United States Judicial Conference concerning Covid-19 and federal procedural rules.
- C. The Committee's third charge will be to review all major studies now under way in the other forty-nine states concerning Covid-19 and state court procedural rules.
- D. The Committee will limit its further study to ways to improve the practice of trial law in Wisconsin both at the criminal and civil levels in order to come to terms with Covid-19 and the aftermath of that pandemic, including the following:
 - (i) How to comply with relevant ethical precepts such as ABA Formal Opinions 477B and 482, as well as Pennsylvania Formal Opinion 2020-300.
 - (ii) How to manage remote workers (whether lawyers or office personnel) so as to minimize improper storing or review of electronic material, as well as how to otherwise preserve client confidentiality.
 - (iii) How best to conduct remote depositions, whether during or after the pandemic.
 - (iv) How to handle exhibits when conducting a remote deposition.
 - (v) How to use the cloud to collect, house and review e-discovery, including the safe and effective management of technology-assisted review (TAR).
 - (vi) How to make greater use of Fed. R. Civ. P. 36(b)(6).
 - (vii) How to make greater use of the state counterparts to Fed. R. Civ. P. 36(b)(c), especially Wis. Stat. §804.05(2)(e).

IV. Committee Reports.

- (a) Evidence & Civil Procedure Committee.

(b) Criminal Procedure Committee.

(c) Appellate Procedure Committee.

V. Adjournment.

PUBLIC NOTICE

All meetings of the Judicial Council and its committees are open to the public. The Council's October 16, 2020 meeting will be conducted by Zoom. Members of the public are welcome to join the meeting by using the URL which is set forth above, namely <https://zoom.us/j/93826787757>. However, members of the public must supply their name before they will be granted admission. In addition, the mikes of the public participants will be muted. If any member of the public disrupts the meeting in any way, they will be removed from the meeting and will be barred from readmission. For more information, please contact the Chair of the Judicial Council, Mr. Gleisner, at 414-651-3182 or wgleisner@sbcglobal.net.